

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

Philip R. Anderson,

No. 13-cv-1037 (PJS/LIB)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

Bank of America,

Defendant.

---

This matter came before the undersigned United States Magistrate Judge upon the routine supervision of cases and upon an assignment made in accordance with 28 U.S.C. 636(b)(1)(A).

Philip R. Anderson (“Plaintiff”), proceeding *pro se*, commenced this action on May 1, 2013, by filing his Complaint, [Docket No. 1], and on that same date made an Application to Proceed *In Forma Pauperis* (“IFP”). [Docket No. 2]. This Court granted Plaintiff’s application to proceed IFP on May 7, 2013, (Order [Docket No. 6]), and also on that date, the Clerk’s office mailed to Plaintiff the U.S. Marshal Service Form.

It has now been more than 120 days since the Court granted Plaintiff’s Application to Proceed IFP, and Plaintiff has not provided proof that he has served a copy of the summons and complaint on Bank of America (“Defendant”). See Fed. R. Civ. Pro. 4(m) (“If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”).

On October 15, 2013, this Court instructed Plaintiff that he was required to “provide proof of service or show good cause for an extension of time to serve Defendant” within twenty (20) days of the Court’s Order. ([Docket No. 8], at 1). Additionally, the Court gave notice to

Plaintiff that “[i]f Plaintiff fails to comply with these directives, the undersigned will recommend that this action be dismissed for failure to effect proper service and failure to prosecute.” (Id. at 1-2).

As of today’s date, more than 20 days have passed since the Court issued its Order, and Plaintiff still has neither provided proof of service on Defendant, nor provided good cause why this Court should grant him an extension of time to do so.

Therefore, pursuant to the provisions of Rule 4(m), the Court recommends that this action be dismissed for failure to effect proper service and failure to prosecute unless Plaintiff, within the 14-day deadline to object to this Report and Recommendation, can provide proof of service or show good cause for an extension of time to serve Defendant.

Based upon the above, and upon all the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED** that Plaintiff’s Complaint, [Docket No. 1], be **DISMISSED without prejudice**, for failure to effect service and for lack of prosecution, unless Plaintiff, within the 14-day deadline to object to this Report and Recommendation, provides proof of service or shows good cause for an extension of time to serve Defendant.

Dated: November 14, 2013

/s/ Leo I. Brisbois  
LEO I. BRISBOIS  
United States Magistrate Judge

## NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties **by November 28, 2013**, a writing that

specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.